IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

68-0157 (9-06) - 3091078 - EI

ANN J ZART
Claimant

DEERY BROTHERS INC
Employer

APPEAL NO. 12A-UI-11947-LT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 09/02/12
Claimant: Respondent (1)

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The employer filed an appeal from the September 21, 2012 (reference 01) decision that allowed benefits. After due notice was issued, a hearing was held by telephone conference call on December 6, 2012. Claimant participated. Employer participated through fixed operations manager Ron Bennet and Jerry Zick and was represented by Jackie Nolan of Employers Unity. Observer Anita Dhar was not available at number provided and did not participate.

ISSUE:

Did claimant voluntarily quit the employment with good cause attributable to employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a service associate from July 15, 2012 and was separated from employment on September 4, 2012. Immediate supervisor, administrative assistant/rental and warranty manager Shannon Mercer and service advisor Randy Butler frequently talked about sex and drugs in descriptive and graphic detail. When she asked them to stop talking they told her to shut up. They took her employee manual after she referred them to it. She reported it to Bennet after Mercer told her she could end her employment and called her “stupid” in front of customers more than once. She provided significant detail about the circumstances surrounding her initial report to Bennet a day after he returned from vacation. A week later the bullying behavior started again and became worse so she told Bennet nothing had changed and she was leaving.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant voluntarily left the employment with good cause attributable to the employer.

Iowa Code section 96.5-1 provides:

> An individual shall be disqualified for benefits:
>
> 1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

871 IAC 24.26(4) provides:

> Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:
>
> (4) The claimant left due to intolerable or detrimental working conditions.

A notice of an intent to quit had been required by *Cobb v. Emp't Appeal Bd.*, 506 N.W.2d 445, 447-78 (Iowa 1993), *Suluki v. Emp't Appeal Bd.*, 503 N.W.2d 402, 405 (Iowa 1993), and *Swanson v. Emp't Appeal Bd.*, 554 N.W.2d 294, 296 (Iowa Ct. App. 1996). Those cases required an employee to give an employer notice of intent to quit, thus giving the employer an opportunity to cure working conditions. However, in 1995, the Iowa Administrative Code was amended to include an intent-to-quit requirement. The requirement was only added to rule 871-24.26(6)(b), the provision addressing work-related health problems. No intent-to-quit requirement was added to rule 871-24.26(4), the intolerable working conditions provision. Our supreme court recently concluded that, because the intent-to-quit requirement was added to 871 IAC 24.26(6)(b) but not 871-24.26(4), notice of intent to quit is not required for intolerable working conditions. *Hy-Vee, Inc. v. Emp't Appeal Bd.,* 710 N.W.2d 1 (Iowa 2005).

The U.S. Supreme Court has held that a cause of action for sexual harassment may be predicated on two types of harassment: (1) Harassment that involves the conditioning of concrete employment benefits on sexual favors, and (2) harassment that, while not affecting economic benefits, creates a hostile or offensive working environment. *Meritor Savings Bank v. Vinson*, 477 U.S. 57, 62 (1986). "The use of profanity or offensive language in a confrontational, disrespectful, or name-calling context may be recognized as misconduct, even in the case of isolated incidents or situations in which the target of abusive name calling is not present when the vulgar statements are initially made." *Myers v. Emp't Appeal Bd.*, 462 N.W.2d 734 (Iowa Ct. App. 1990).

Inasmuch as an employer can expect professional conduct and language from its employees, claimant is entitled to a working environment without being the target of abusive name calling. An employee should not have to endure bullying or a public dressing down with abusive language directed at them in order to retain employment any more than an employer would tolerate it from an employee. Mercer, as manager and not a mere supervisor or lead worker, is an agent of the employer and operates from a position of authority over subordinate employees. When an employer assigns a manager authority over subordinate employees it accepts the responsibility of that manager's behavior towards employees. Mercer's abusive language and sexual harassment and failure to supervise or curtail Butler's inappropriate behavior towards claimant created an intolerable work environment for claimant that gave rise to a good cause and reason for leaving the employment. Benefits are allowed.

DECISION:

The September 21, 2012 (reference 01) decision is affirmed. Claimant voluntarily left the employment with good cause attributable to the employer. Benefits are allowed, provided she is otherwise eligible and the benefits withheld shall be paid.

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Dévon M. Lewis
Administrative Law Judge

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Decision Dated and Mailed

dml/bjc